

CLYDEBANK HOUSING ASSOCIATION LTD

TO: Management Committee (26 May 2020) **DATE:** 21.05.2020

FROM: Chief Executive

SUBJECT: **Updated Model Rules – SFHA Charitable Model Rules (Scotland) 2020 – Item 7e (For Information)**

Purpose of Report

The purpose of the report is to set out the process for the proposed adoption of the new 2020 Model Rules (the Association's current rules are the 2013 version which our shareholders adopted in June 2015). The new rules reflect the Regulatory Standards of Governance and Financial Management and the Constitutional Requirements for Registered Social Landlords set out by the Scottish Housing Regulator in its Regulatory Framework (revised in 2019), as well as legislative changes such as the Housing (Amendment)(Scotland) Act 2018.

Potential impact on tenants and service users/Tenant Consultation requirements

There is no adverse impact on tenants and other service users as a result of information and decisions required in this report.

Value for Money

CHA considers Value for Money in all aspect of its business including: -

- Managing our resources to provide quality services and homes to meet the needs of customers and the local community.
- Delivering the right service at the right time at the right cost.
- Planning for and delivering year on year improvements on our services based on customer priorities.
- Getting the most out of our assets and staff by operating efficiently and effectively.

There are no value for money considerations in relation to a change in the Association's Rules.

Risk

It would be prudent to adopt the updated Rules as they reflect changes in legislation as well as the 2019 SHR regulatory framework conditions which require mandatory compliance. It is strongly recommended that any organisations using Rules based on a Model developed prior to 2020 update to this Model as soon as possible.

Legal/constitutional Implications (Reference to Model Rules)

There are no legal implications as a result of the information contained within this report if the Association adopts the Model.

Relevant CHA Objectives:

- To ensure local decision making and community control, we will encourage our tenants and other customers to influence our policy and participate in decisions, which may affect them.
- To ensure that our resources are adequate to deliver our objectives by investing in our people, demonstrating value for money and through robust procurement practices.
- To promote social inclusion by applying principles of equality and diversity to everything we do.

Relevant SHR Regulatory Standards of Governance and Financial Management

Standard 1

The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.

Standard 2

The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.

Standard 3

The RSL manages its resources to ensure its financial well-being, while maintaining rents at a level that tenants can afford to pay.

Standard 4

The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.

Standard 5

The RSL conducts its affairs with honesty and integrity.

Standard 6

The governing body and senior officers have the skills and knowledge they need to be effective.

Standard 7

The RSL ensures that any organisational changes or disposals it makes safeguard the interests of, and benefit, current and future tenants.

The Management Committee will require confirming that the contents of this report and decisions required (if applicable) do not constitute a breach, material or otherwise, of the above Standards and there is no requirement to report a Notifiable Event to the Regulator.

Equalities

No protected group is adversely affected by the proposals, recommendations or updates within this report. Our commitment to equal opportunities and fairness applies irrespective of factors such as race, sex, disability, age, gender reassignment, marriage & civil partnership, pregnancy & maternity, religion or belief and sexual orientation.

1.0 Introduction

The Association is currently operating from the SFHA Charitable Model Rules (Scotland) 2013 which the Management Committee put forward to shareholders for adoption at our AGM in June 2015. The SFHA Charitable Model Rules 2020 have been produced in conjunction with the membership, and approved by the Scottish Housing Regulator, the Office of the Scottish Charity Regulator and the Financial Conduct Authority. The revised model can be found on the SFHA website by clicking on the link below:

- [SFHA Charitable Model Rules 2020](#)

The update reflects the Regulatory Standards of Governance and Financial Management and the Constitutional Requirements for Registered Social Landlords set out by the Scottish Housing Regulator in its Regulatory Framework (revised in 2019), as well as legislative changes such as the Housing (Amendment)(Scotland) Act 2018. The most significant changes in the update relate to:

- the creation of a discretionary power for the governing body to impose a leave of absence when there is a severe breach of the Code of Conduct being investigated
- the creation of a discretionary power for governing body in rare circumstances to block a nomination to committee if it was not in the interest of the association or if there would be a conflict of interests in that person becoming a governing body member
- optional provisions (within supporting guidance) where an association could – if it so wished – reserve places on the board for specific skill sets and appoint to those positions

To help us in the process of updating our Rules, I have requested a document tracking all of the changes in the 2020 update as compared to our 2013 version of the Model Rules from the SFHA (the only tracked changes version available at the moment is a comparison with the 2013 Rules (as amended 2015)). Once this is received, I will prepare a paper setting out the changes and any potential risks in order that the Management Committee can reach a decision as to whether to consider putting forward the 2020 Model as presented to our Shareholders for adoption at a Special General Meeting which would be held on the same night as our Annual General Meeting.

Meantime, an overview of the procedure that must be followed in order to make any amendments to our Rules is detailed below: -

Process and Timescales for Rule Changes

To summarise, the steps for amending and adoption are as follows: -

1. **Decide whether the proposed changes are satisfactory**
2. **Has our governing body thoroughly considered any proposed amendments?**

- Detailed reports will be provided to the MC outlining the **benefits** and

risks attached to each proposed change, and adequate time will be allowed for in depth discussion.

- Before we seek consent from any regulatory body to any rule amendment, our MC must first formally agree to the proposals.

3. Assess whether we need to seek consent from the Office of the Scottish Charity Regulator (OSCR)

3.1 Adopting the SFHA Model without changes to objects

- **If we decide to adopt the SFHA Charitable Model Rules 2020 and propose to make no amendments to the objects within the model (section 2 of the SFHA Charitable Model Rules 2020), then we do not require to seek OSCR consent.** This is because OSCR has, as well as approving the Model Rules, given its consent to any charities that adopt the Model. The only requirement would be to notify OSCR once the Model has been adopted (see step 7).

3.2 Adopting the SFHA Model with changes to objects

- However, if we wish to make any other amendments to the objects (section 2 of SFHA Charitable Model Rules 2020), an application for consent must be made to OSCR at least 42 days in advance of the proposed change taking effect.
- OSCR aims to respond to any basic application (such as changing objects or changing name) within 28 days.

4. Do we need to seek Scottish Housing Regulator (SHR) consent?

- The Housing (Amendment) (Scotland) Act 2018 removed the requirement to seek the SHR's consent prior to making any rule amendments. We must however notify the SHR once we have adopted any revisions to our rules (see step 7).

5. What approval do you need to seek from your members?

- The Association's members must be invited to a Special General Meeting (SGM) to adopt any rule changes.
- Our current rules outline the necessary notice period that we are required to give members prior to the SGM. (As per the SFHA Charitable Model Rules 2013, our Secretary would have to provide **14 days' written notice** in advance of the SGM (Rule 22.1).
- At the SGM, a majority of three-quarters of members present will be required to adopt any amendment.

- The SGM will be held on the same date as our Annual General Meeting (AGM), however, separate notices will be sent out and separate minutes will be recorded.

6. Registering our rules with the Financial Conduct Authority (FCA)

6.1 Registering our amended Rules to the FCA

- Once we have gained our members' approval at the SGM, we must then apply to the Financial Conduct Authority to formally register our amended rules either by their Portal (preferred) or downloading forms and submitting via post/email.

6.2 Required forms and signatures

- We will be required to fill out the appropriate form below, or the online form Mutual Society Portal equivalent:
 - [Complete amendment to the rules](#) – **This form (or the online form Mutual Society portal equivalent) is required if we are updating to the SFHA Model Rules 2020.**
- Complete Amendment applications must be signed off by the Secretary of the Association. In addition, a Notary Public (a solicitor qualified as such) must also sign and stamp the Statutory Declaration included in the forms.

6.3 Submissions to FCA

- Regardless of which method we use to submit our applications, the relevant forms must be submitted to the FCA along with necessary accompanying documents. The documents to be submitted are as follows: -
 - one signed copy of the society's rules (or two copies when submitting via post)
 - a marked up version of the rules tracking changes made to the model, if we are using the SFHA model
 - a completed Statutory Declaration form (included at section 6 in the [Complete amendment to the rules](#) form).

7. When we will receive confirmation of registration from the FCA and who we must notify

- The FCA will generally aim to respond within 15 working days. If the FCA requires no further information and concludes that the rules are not contrary to the Co-operative and Community Benefit Societies Act 2014, it will confirm that our amended rules have been registered. Our rule amendments are not legally effective until the date on which the FCA confirms it has registered them.

- We should notify the SHR within 28 days of the amendment being made through the SHR's [Social Landlord Portal](#). When notifying SHR we must forward the following:
 - Confirmation that we have complied with Regulatory Standard 7
 - A statement that you have adopted rules based on the SFHA model (should this be the case).
 - Either
 - a statement that you have adopted the SFHA model without amendment or
 - a brief outline of any amendments to the SFHA model you have made or
 - a statement outlining the alternative constitutional model you have adopted
 - A signed copy of the new constitution
 - The date the constitution was or will be adopted
 - A copy of the report and minute of the governing body meeting at which it was agreed to adopt the new constitution
- Charitable organisations must also notify OSCR upon confirmation of FCA registration and following notification to the SHR. Each must forward the following to OSCR:
 - A copy of the FCA registration
 - A copy of the SHR's confirmation e-mail that it has received the required information and documentation above
 - A copy of the registered rules